



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ogden Allied Services Corporation--
Reconsideration
File: B-224692.2
Date: October 20, 1986

DIGEST

1. A protest is filed for purposes of General Accounting Office (GAO) timeliness rules when it is received in GAO notwithstanding when it allegedly was mailed. GAO time/date stamp establishes the time of receipt absent other evidence to show actual earlier receipt.
2. Protester's assertion that it needed more than 10 days to review agency's evaluation of its technical proposal submitted in a complex, large dollar value procurement does not warrant consideration of the untimely protest, since neither the timeliness exception for good cause, nor the exception for significant issues, applies.
3. Protesters are charged with constructive knowledge of Bid Protest Regulations, and an alleged misrepresentation by an agency as to the timeliness requirements of those regulations therefore is not a defense to dismissal of a protest as untimely.

DECISION

Ogden Allied Services Corporation requests that we reconsider our September 16, 1986, dismissal of the firm's protest concerning the rejection of its offer under solicitation No. GS-11P86MJC0065, issued by the General Services Administration (GSA) for operation, maintenance and repair services for heating/refrigeration operation transmission plants in Maryland, Virginia and the District of Columbia. We dismissed the protest because, as provided in our Bid Protest Regulations, we do not consider protests filed in our Office beyond 10 working days of the date the basis for protest first was known. See 4 C.F.R. § 21.2(a)(2) (1986).

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Ogden requests that we reconsider on the ground that it mailed, and our Office acknowledged receipt of, its protest within the time limit, and that it should have been entitled to more than 10 working days to protest due to the complexity of the proposal in any event. Ogden also states that the solicitation did not advise bidders of protest procedures, and that it had been misinformed by GSA that the protest submission time limit was 30 days. We affirm the dismissal.

Our Bid Protest Regulations explain that, for timeliness purposes, the term "filed" means receipt of the protest submission in the General Accounting Office. 4 C.F.R. § 21.2(b). Thus, the fact that Ogden may have mailed its protest letter within the 10-day period is not relevant to the protest's timeliness.

Moreover, our Office's time/date stamp establishes the time we received protest materials absent other evidence to show actual earlier receipt. Yale Materials Handling Corp.--Reconsideration, B-223180.2, June 12, 1986, 86-1 C.P.D. ¶ 548. Our time/date stamp shows receipt of Ogden's protest letter, dated September 11, on September 16, which is the eleventh working day from August 29, the date Ogden received the information on which the protest was based. Although the firm asserts that we notified it of our receipt of the protest in a telephone call of September 15, our records show that the telephone call to Ogden acknowledging receipt of the protest actually was placed on September 16. Since there is no evidence that we received the letter before the 10-day period expired, the protest properly was found untimely.

Ogden also contends that it needed more than 10 days to review GSA's evaluation of its technical proposal because the procurement was a complex one of large dollar value, so that it is unfair to limit the time for the filing of protest to 10 working days. The only exceptions to our timeliness rules, however, are for situations where some compelling reason beyond the protester's control prevented a timely filing, or where the protester has raised a significant issue, i.e., a matter of widespread interest or importance to the procurement community. Neither exception applies simply because the procurement may have been complex or the materials related to it extensive or detailed. See Farrell Lines, Inc.--Reconsideration, B-220442.2, Dec. 2, 1985, 85-2 C.P.D. ¶ 619.

Ogden's allegation that its delay in protesting was the result of a lack of information about specific time limits in the protest procedures described in the solicitation and misrepresentations by GSA as to our timeliness rules does not

excuse Ogden from compliance with those rules. Prospective contractors are on constructive notice of our Bid Protest Regulations, since they are published in the Federal Register and the Code of Federal Regulations. See B & B Boat Building Inc.--Reconsideration, B-220852.4, Jan. 22, 1986, 86-1 C.P.D. ¶ 69. These regulations provide objective criteria for application to all protests before our Office and may not be waived by the representations of a contracting official. Jarrell-Ash Division, Fisher Scientific Co.--Request for Reconsideration, B-209236.2, Dec. 21, 1982, 82-2 C.P.D. ¶ 562. Thus, the fact that Ogden was not familiar with, or allegedly was misinformed about, our filing requirements is not a defense to dismissal of its protest as untimely.

Our dismissal of Ogden's protest is affirmed.

for Seymour E. Evans
Harry R. Van Cleve
General Counsel